

BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of Wisconsin Energy Corporation for
Approval to Acquire the Outstanding Common Stock
of Integrys Energy Group, Inc.

Docket No. 9400-YO-100

WEC'S INITIAL POST-HEARING BRIEF

I. Introduction.

Wisconsin Energy Corporation (“WEC”) has asked the Public Service Commission (“Commission”) to approve WEC’s plan to acquire 100% of the outstanding common stock of Integrys Energy Group, Inc. (“Integrys”). Pursuant to Wis. Stat. § 196.795(3), the Commission should approve the Transaction as proposed by WEC, subject to those conditions to which WEC has already agreed. WEC has explained that this acquisition (the “Transaction”) will create a larger, stronger, Wisconsin-based utility company, ultimately resulting in numerous benefits for utility consumers, investors, and the public.

Customers of Wisconsin Electric Power Company (“WEPCO”), Wisconsin Gas LLC (“WG”), and Wisconsin Public Service Corporation (“WPSC”) will benefit because the Transaction will create opportunities, over time, to realize savings through enhanced purchasing power, economies of scale, adoption and implementation of best practices, cost-sharing over a broader organization, and efficiencies in operations, maintenance, and project management. Estimates of these savings range from \$78 to \$130 million per year. The Transaction will also allow joint electric resource planning, with the potential of reducing future costs by up to \$600 million.

Wisconsin customers will also benefit from the creation of a larger and more diverse utility company with greater liquidity and enhanced access to the capital markets, which will result in lower borrowing costs. WEC has committed not to seek rate recovery of the \$2.4 billion acquisition premium it is paying for Integrys, not to seek recovery of transaction costs, which are expected to be up to approximately \$236 million, and to deliver to customers the future net savings generated by the combined operations of the WEC and Integrys utilities.

The host of additional conditions proposed by Staff and intervenors stem from an incorrect reading of the statutory “best interests” standard. More importantly, these conditions are the classic example of a solution in search of a problem: even as proponents devise ever more elaborate “benefit conditions,” they ignore the very real benefits that will flow from the Transaction. The conditions accepted by WEC are sufficient to safeguard these benefits and minimize downside risk, whereas imposing additional restrictions would handcuff management’s day-to-day operation of the company and potentially harm customers, employees and the public. It is for the Commission to discern between adequate safeguards and opportunistic over-reaching, and WEC asks the Commission to do so here.

II. Background.

The form and structural implications of the Transaction have been described extensively in WEC’s pre-filed testimony and need not be restated at length. (Direct-WEC-Lauber-3-6). WEC will acquire all outstanding stock of Integrys in a Transaction valued at \$9.1 billion, which WEC will finance by issuing new WEC stock and approximately \$1.5 billion in acquisition debt. (*Id.*) After the acquisition, Integrys and its subsidiary utilities will be subsidiaries of WEC, and the combined company will be known as WEC Energy Group, Inc. (*Id.*; Ex.-WEC-Lauber-3r). WEC’s current subsidiaries will remain subsidiaries of WEC Energy Group. (*Id.*)

The Transaction has been thoroughly vetted by numerous participants in this proceeding. In Wisconsin alone, this docket has seen testimony by twenty witnesses representing all interested stakeholders:¹ the companies that will be affected (WEC and Integrys), Commission Staff, residential and small commercial ratepayers (CUB), industrial customers (WIEG and Jobs4WI), wholesale customers (Great Lakes Utilities), and labor unions (Local 420). In addition to this testimony, discovery in this docket has yielded over 550 individual data requests (including subparts) from Staff, CUB, The Alliance for Solar Choice, WIEG, Jobs4WI, and GLU. The public has had the opportunity to participate directly through online comments and public hearings in both Milwaukee and Green Bay.

Moreover, WEC has sought regulatory approval from five other agencies across four other jurisdictions: Illinois, Michigan, Minnesota, the U.S. Department of Justice, and the Federal Energy Regulatory Commission (FERC), each with attendant proceedings and discovery. The parties have had the benefit of observing these proceedings since all discovery from other jurisdictions—totaling over 1,300 discrete questions including subparts—has been filed in the Wisconsin docket. These federal and state proceedings ensure that the Transaction is reviewed from multiple angles, enabling this Commission to focus on the Transaction’s implications for Wisconsin.

III. The Transaction will provide benefits to customers, shareholders, and the public.

Section 196.795(3) of the Wisconsin Statutes directs the Commission to approve an acquisition like the Transaction if it is “in the best interests of utility consumers, investors and the public.” WEC’s submissions in this proceeding have been dedicated to demonstrating that this statutory standard is met. Objections to the Transaction, ostensibly raised with reference to this standard, have generally fallen into three broad categories:

¹ There were, all told, 19 intervenors in this case.

- (1) Does the Transaction deliver benefits to customers?
- (2) Are customers protected from potential negative effects of the Transaction?
- (3) How will the Transaction affect the governance of American Transmission Company (“ATC”)?

Within each of these categories, parties have proposed conditions for Commission consideration. WEC has agreed to a number of these proposed conditions and opposes others. The bulk of this brief discusses the conditions which WEC still opposes. But first, it addresses a threshold issue: the proper standard for legal approval of the Transaction.

A. The “best interests” standard does not require immediate monetary benefits to customers on Day One.

An overarching disagreement in this proceeding has been the proper legal standard for Commission approval of the Transaction under Wis. Stat. § 196.795(3): what is the meaning of the statutory language requiring that the Transaction be “in the best interests of utility consumers, shareholders, and the public”?

Staff and intervenors have argued that WEC must demonstrate not merely that the Transaction will cause no harm to consumers, but also that consumers will be better off than they would have been absent the Transaction. (Rebuttal-PSC-Bartels-12-13; Direct-CUB-Hahn-7; Direct-Jobs4WI-Vock-10; Rebuttal-Jobs4WI-Vock-2; Direct-WIEG-Kollen-4). In fact, Staff and intervenors go further, insisting that consumer benefits must begin to flow the instant the Transaction closes. *See* Rebuttal-PSC-Bartels-14 (recommending that “immediate and insurable [sic] benefits be captured for the ratepayers”); Sur-surrebuttal-PSC-Bartels-7 (same); *see also* Rebuttal-CUB-Hahn-3pr; Direct-Jobs4WI-Vock-11; Direct-PSC-Kettle-8; Rebuttal-PSC-Kettle-3. The notion that cost savings from integrating two organizations should materialize even before the integration process has begun is absurd on its face. The notion that customers should

immediately benefit from a transaction regardless of when cost savings materialize is also inconsistent with the Commission's own approach to reviewing merger applications.

The Commission has had little opportunity to address the public interest analysis under Wis. Stat. § 196.795(3).² Only a single Commission decision engages in that analysis in any detail. In connection with WEC's own acquisition of WICOR (the former parent company of Wisconsin Gas), the Commission addressed whether WEC was able to "substantiate sufficient system or economic benefits resulting from the acquisition." Dkt. Nos. 9401-YO-100, 9402-YO-101, Final Order dated March 15, 2000 ("WEC-WICOR Decision") at 7-8. But the Commission only addressed this issue in connection with WEC's request to recover the acquisition premium from customers. The Commission noted that in its prior decisions, it had required a clear showing of substantial system benefits resulting from an acquisition in order to justify recovery of any of the acquisition premium. *Id.* Here, WEC has expressly stated from the very outset that it is not seeking recovery of any of the \$2.4 billion acquisition premium.

The Commission's WICOR decision is most instructive in how the Commission discussed each prong of the § 196.795(3) standard. It found the proposed transaction to be in the best interests of utility consumers "*because ratepayers could realize rate reductions in the long term, along with potential increases in reliability and gas cost savings.*" *Id.* at 15 (emphasis added). This emphasis on potential long-term benefits is consistent with WEC's approach to the Transaction in this proceeding, and at odds with Staff's and intervenors' insistence on definite, tangible benefits on Day One. Similarly, the Commission found the WICOR acquisition to be in the best interest of the public because it would "preserve entities that have had long histories of civic and charitable involvement," the combined entity would "continue to partner with

² WPS Resource Corporation's ("WPSR") acquisition of Peoples Energy Corporation ("PEC") and its two Illinois utilities was examined under a different statutory framework that does not incorporate the "best interests" standard, Wis. Stat. § 196.795(5) ("Regulation of Holding Company Systems").

communities . . . in a positive manner,” and Wisconsin “will continue to receive the economic development benefits of a company that resides in and understands the community it serves.” *Id.* at 16-17 (emphasis added). The Commission’s focus on maintaining current strengths, as opposed to identifying additional benefits—let alone immediate additional benefits—is again consistent with WEC’s approach to the Transaction in this proceeding, and contrary to Staff’s and intervenors’ professed desire to gain something more by taking from investors and giving to consumers.³

In any event, while the Commission may wish to resolve the precise meaning of the § 196.795(3) standard at some point, it need not do so today. In this proceeding, the Transaction should be approved under either version of the standard—“no harm” or “net benefits”—because it will provide benefits for utility consumers, investors, and the public.

B. WEC has identified substantial benefits and has agreed to a long list of conditions that will ensure the Transaction delivers value.

Although WEC does not agree that Wis. Stats. § 196.795(3) requires immediate customer benefits as a condition of Transaction approval, it has identified numerous benefits which it

³ Two other Commission decisions within the last ten years address the public interest analysis under § 196.795(3), but only in uncontested cases, and without significant discussion. Most recently, in *Application of Consolidated Water Power Co. for Approvals Associated with the Acquisition of its Corporate Parent, NewPage Corporation by Verso Corporation*, Dkt. No. 1330-EI-100, the Commission approved an acquisition under § 196.795(3), finding that the acquisition “should result in a stronger, more competitive paper company with a stronger capital structure.” Final Order dated April 3, 2014 (PSC REF# 201584) at 6. This was the extent of the public interest analysis in the Final Order, which made no mention of specific benefits for customers or the public.

Similarly, in *Petition by NewPage Holding Corp. et al. for Declaratory Ruling, and Required Approvals, if any, for the Sale of Stora Enso North America, Inc.*, Dkt. No. 1330-DR-101, the Commission did not elaborate on the meaning of the § 196.795(3) standard. The applicants in that proceeding projected benefits for their own employees and customers, as well as Wisconsin’s economy, while the Commission itself identified concerns relating to capital resources. On balance, the Commission imposed conditions relating to its capital concerns, but found that “the record generally supports the conclusion that the Transaction is in the Public Interest” without making any finding that the applicants had demonstrated particular benefits. Final Order dated December 11, 2007 (PSC REF# 86937) at 6.

anticipates will flow from the Transaction—benefits for customers and the public, not merely WEC’s investors, as several witnesses suggest. These include but are not limited to:

- WEC Energy Group will obtain increased liquidity, a strong combined balance sheet and cash flows, and geographic and earnings diversification, enhancing its ability to attract capital at a reasonable cost, invest prudently in needed utility infrastructure, and withstand economic and financial downturns. (Direct-WEC-Lauber-6, 11-12; Direct-WEC-Reed-28-32, 39-40).
- The Transaction will enable WEC Energy Group to capitalize on economies of scale in areas such as energy efficiency, low income and conservation programs. (Direct-WEC-Lauber-6; Direct-WEC-Reed-30-31).
- WEC Energy Group’s larger, more diversified electric generation fleet will enable it to identify and accomplish efficiencies through joint resource planning over a broader geographic footprint. (Direct-WEC-Lauber-7). Staff witness Mr. Detmer has testified that if this potential is acted upon and realized, it could mean savings of up to \$600 million. (Direct-PSC-Detmer-2).
- Wisconsin utility customers will benefit over time from a variety of operational efficiencies, while continuing to receive adequate, reliable, efficient and safe electric and gas service. (Direct-WEC-Lauber-7). After five to ten years, these savings are estimated to reach three to five percent of non-fuel O&M for the combined entity, or approximately \$78 million to \$130 million in annual savings. (Direct-WEC-Reed-34-39, Sur-Rebuttal-WEC-Reed-4).
- The Wisconsin utilities will maintain their long tradition of making significant contributions to regional economic development and generously supporting educational, cultural, and charitable activities in the communities they serve. (Direct-WEC-Lauber-8).
- All union contracts will be honored, the vast majority of any workforce reductions resulting from the Transaction are expected to occur through attrition, and employees will become part of a company that is better equipped to compete and maintain its independence in the rapidly changing energy business. (*Id.*)
- The Transaction will ensure that WEC Energy Group and the Wisconsin utilities maintain their historical ties to the State, WEC’s headquarters and associated jobs will remain in Wisconsin, and decisions concerning energy policy will continue to be made in Wisconsin. (Direct-WEC-Lauber-10; Direct-WEC-Reed-39-40).

In addition, WEC has agreed to numerous conditions—a number of which WEC itself proposed—intended to maximize projected benefits and ensure that customers and the public share in these benefits. As identified in Ex.-WEC-Lauber-04 and -10, these include:

- All transaction costs incurred by or allocated to WEPCO, WG, and WPSC shall be specifically identified and allocated to non-utility accounts. [Item 1]
- WEC Energy Group may not recover any acquisition premium from the utility ratepayers. No acquisition premium, even though not recoverable in rates, may be allocated to any WEPCO, WG, or WPSC account. [Item 3]
- After closing, and in any rate proceeding decided within six years after the Transaction closing, WEC shall provide proof that no transaction costs are included in historical expenses of the operating utility or in the determination of the revenue requirement. [Item 8]
- WEC shall expense transaction costs as incurred. WEPCO, WG, and WPSC may not recover any acquisition-related transaction costs from the Wisconsin retail jurisdictions. [Item 14]
- Transaction costs should not be considered in determining excess revenues under Wis. Admin. Code § PSC 116.07(6) or any other Commission determination in which earnings is a consideration. [Item 16]
- Within 120 days of closing, the utilities will submit a joint integrated resource plan based on EGEAS modeling that analyzes various generating alternatives similar to the individual utility filings recently filed with the Commission. [Item 47] WEC has agreed to implement this plan as the Commission sees fit. (Sur-Rebuttal-WEC-Leverett-9). Assuming Staff's analysis is correct, this point alone could result in \$600 million in savings. (Direct-PSC-Detmer-2).
- WPSC shall cooperate with Commission Staff on a study of WPSC's gas emergency response process. Within six months of the closing of the Transaction, this study group will report back to the Commission. [Item 58]
- WEC Energy Group shall notify the Commission if it develops any plans to implement part, or all, of the software developed through the ICE project, or some, or all, of the customer service policy changes proposed by WPSC at least 30 days prior to any customer service policy changes. [Item 59]
- For 2 years from the date of closing of the Transaction, any reduction in headcount among employees in Wisconsin who are represented by a labor union will occur only as the result of voluntary attrition or retirement. [Item 60]

- The headquarters of the post-merger WEC Energy Group and associated jobs will be located in Wisconsin and critical decisions affecting energy policy in Wisconsin will continue to be made in Wisconsin. [Item 61]
- WEC will maintain operational headquarters in Milwaukee and Green Bay. [Item 62]
- Commission staff shall review the existing Low Income Programs in future rate cases, to ensure that the programs continue to produce optimal benefits. [Item 63]
- The utilities (WEPCO, WG and WPSC), in any proceeding in which recovery, analysis and/or justification of acquisition savings is at issue, shall provide a detailed analysis of transition costs and savings for Commission review and approval. Such analysis would include: (a) an accounting of transition costs incurred by the combined company broken down by function to the extent possible, (b) a calculation of acquisition savings accomplished by the combined company broken down by function to the extent possible, and (c) where costs exceed savings for a particular function, a demonstration that the costs are reasonable and prudent. [Item 79]
- WEPCO, WG and WPSC will identify and track all acquisition-related transition costs incurred by the utility and allocated to it in a manner that is readily reviewable and auditable by the Commission at a location within Wisconsin. [Item 81]
- If transition costs are allowed, recovery should be limited to actual savings with savings in excess of transition costs flowed through 100% to customers. [Item 84]
- WEPCO, WG, and WPSC can recover acquisition-related transition costs from the Wisconsin retail jurisdiction, only if and to the extent that (a) such costs are incurred by or allocated to each of the utilities (each utility's portion or share of acquisition-related transition costs); (b) such costs are associated with financial benefits that each utility's ratepayers will receive as a result of the acquisition; and (c) the acquisition-related savings realized by each utility's ratepayers are equal to or greater than its acquisition-related transition costs. [Item 86]
- For severance and/or early termination costs for which WEC seeks rate recovery, WEC shall provide detailed information in any rate proceeding on each instance of severance and/or early termination—the position, the reasoning, the costs and savings, etc., in sufficient detail for the Commission to make a determination on whether the cost is a transaction cost—unrecoverable or a transition cost. [Item 87]⁴

While Staff and intervenors have questioned the strength of these benefits and the efficacy of these agreed-upon conditions, they have not submitted any actual evidence

⁴ Mr. Lauber's sur-rebuttal testimony classified Item 87 as subsumed by Item 86. (Sur-Rebuttal-WEC-Lauber-5). Ms. Bartels' latest testimony points out that WEC accepted Item 87 independently of Item 86. (Sur-surrebuttal-PSC-Bartels-6). Ms. Bartels is correct: WEC accepted Item 87 with clarification, in the form stated here. (Rebuttal-WEC-Lauber-18).

demonstrating that these benefits do not exist or that these conditions do not suffice to ensure that the Transaction will be in the best interests of utility consumers, investors, and the public. Nor have they identified any harm that the Transaction will cause these stakeholders.

C. In light of the benefits identified—and the conditions agreed to—by WEC, the Commission should reject the additional conditions proposed by Staff and intervenors.

Beginning from the erroneous premise that the “best interests” standard requires immediate and substantial monetary benefits for customers on Day One, Staff and intervenors simply dismiss all of the benefits cited by WEC (although they are presumably not turning them down). Staff and intervenors suggest four categories of conditions in addition to these benefits. The upshot of these demands is that—despite the benefits WEC has clearly identified and the absence of any identified harm resulting from the Transaction—customers must in addition receive some type of a direct payment, and WEC (and, at least indirectly, Integrys) must experience a direct loss in addition to the billions of dollars in costs that they have already agreed to bear, before the Transaction can be approved.

1. The transmission escrow should not be confiscated as a condition of Transaction approval.

Numerous witnesses suggest that as a condition of approving the Transaction, the Commission should simply take money away from WEC, proposing a total or partial write-off of various transmission deferral accounts:

- Jobs4WI proposes that WEC be required to absorb the balance of WEPCO’s transmission deferral account (approximately \$500 million) by the end of 2016. (Item 89, Direct-Jobs4WI-Vock-17).
- CUB proposes that WEPCO be required to permanently write off its transmission escrow costs, thereby excluding these costs from rates. (Item 90, Direct-CUB-Hahn-27).

- WIEG proposes that both WEPCO and WPSC be required to write off their transmission escrows. (Item 92, Direct-WIEG-Kollen-22).
- Staff proposes that WEPCO be required to write off all of its “old” transmission deferral of \$114 million, which Staff estimates at \$68 million net of tax. (Item 91, Direct-PSC-Kettle-5-7, Direct-PSC-Larson-5, Rebuttal-PSC-Kettle-2-4).

A variation of this proposal was raised and rejected just a few months ago, in WEPCO’s most recent rate case. In that case, Staff proposed to write off a portion of WEPCO’s “old” transmission escrow balance. *See* Final Decision dated Dec. 23, 2014, Dkt. 05-UR-107 (PSC REF# 226564) at 29. As a condition of the Commission’s approval of the Transaction, Staff now proposes to write off all of the “old” transmission escrow, while some intervenors seek to write off the escrow in its entirety. The proponents do not attempt to tie their proposal to revenue WEPCO is or will be earning. *See* Rebuttal-PSC-Kettle-3 (“my testimony does not say that I am suggesting the write-off because of past overearnings”). They admit their proposal has nothing to do with whether the underlying costs were prudently incurred. *See* Rebuttal-CUB-Hahn-4 (“My recommendation had nothing to do with the prudence of these costs”). Instead, in a remarkable overreach, they simply assert the Commission must wrest some benefit out of this Transaction, and seizing the escrow balance may as well be it. *See* Rebuttal-PSC-Kettle-3 (“I am suggesting the write-off because the company has offered no immediate rate relief to its customers”); Rebuttal-CUB-Hahn-4 (“it was a way for the proposed transaction to provide reasonably certain benefits to Wisconsin ratepayers”).

The Commission should reject this invitation to treat the transmission escrow as so much low-hanging fruit, particularly as it raises legal and policy issues of the first order. (Rebuttal-WEC-Leverett-17; Rebuttal-WEC-Reed-39-43, Sur-Rebuttal-WEC-Leverett-10-11). These transmission costs were prudently incurred when WEPCO paid ATC for transmission service it received subject to FERC-approved transmission tariffs. The significant transmission

construction projects that contributed to the escrow balance were deemed prudent and were approved by the Commission. These amounts have been escrowed with the Commission's approval in order to mitigate rate increases. Seizing them now, as a condition of approving the Transaction, would constitute retroactive ratemaking untethered from any prudence analysis and contrary to Wisconsin law. (*Id.*)

2. Customers will receive benefits without a bill credit or rate freeze.

Staff witnesses also propose that as a condition of Transaction approval, the Commission should require WEC to pay money directly to customers through a range of bill credits. (Item 78, Direct-PSC-Larson-3-4; Direct-PSC-O'Donnell-24-29). Already assuming the propriety of this proposal, they have even specified the price each Wisconsin utility should pay for the privilege of improving service for its own customers via the Transaction. (Direct-PSC-O'Donnell-29). But the witnesses do not agree among themselves—whereas Mr. O'Donnell argues that 89% of his proposed bill credits (\$60.8 million of a total \$68.7 million credit) should come from WEPCO and WPSC (*id.*), Mr. Larson recognizes that “bill credits are not the best method” for WEPCO or WPSC, and would prefer the transmission escrow write-off discussed above. (Direct-PSC-Larson-4-5).

In light of the recent rate cases finding WEPCO's and WPSC's rates just and reasonable, a new bill credit could only be described as a tax on the Transaction—or, as Mr. Larson puts it, a “guarantee” of benefits from the Transaction. (Rebuttal-PSC-Larson-2). This is particularly true where WEC has already agreed that the actual savings resulting from the Transaction will flow to customers in future rate proceedings.⁵ (Rebuttal-WEC-Leverett-17).

⁵ Jobs4WI proposes a more draconian approach to guaranteeing savings for customers—lopping five percent of O&M costs off the company's revenue requirement beginning with the 2017 test year. (Rebuttal-Jobs4WI-Vock-8). As Mr. Reed testified, Jobs4WI's proposal would result in approximately 1,000 jobs being lost, a result that would significantly undermine the Transaction's benefit to the public. (Sur-rebuttal-WEC-Reed-4).

Staff also hints at a rate freeze. (Direct-PSC-Larson-9-12) (discussing potential conditions on recovery of amounts deferred during a rate freeze). To be clear, Mr. Larson does not believe a rate freeze is appropriate in this case. (*Id.* at 11). Neither does Mr. O'Donnell. (Direct-PSC-O'Donnell-30). And Ms. Bartels states categorically that “[r]ate freezes generally do not work.” (Rebuttal-PSC-Bartels-13). As such, there is no support in the record for a rate freeze of any duration. Given this, the Commission should also reject Staff’s related condition, whereby recovery of deferred amounts during a rate freeze would be tied to the utilities’ authorized ROE. (Item 80, Direct-PSC-Larson-11). Insofar as this proposal rests on an analogy to the WICOR acquisition (Direct-PSC-Larson-10-11), the comparison is inappropriate. When WEC acquired WICOR, a rate freeze with several carve-outs (the “Five-year Rate Restriction Period”) was put in place but WEC was permitted to retain any merger savings achieved during that rate freeze as a means of recovering the acquisition premium. WEC-WICOR Decision at 8-9. Here, WEC has waived recovery of the acquisition premium, and will return merger savings to customers via the rate case process.

3. The proposed earnings cap would constitute retroactive ratemaking.

The record is replete with testimony citing WEC’s historical earnings as justification for adopting several conditions for Transaction approval. *See, e.g.*, Direct-PSC-Kettle-7-8 (transmission escrow write-off); Direct-PSC-Larson-11 (rate freeze); Direct-PSC-O’Donnell-12-14 (any condition considered by the Commission in this proceeding). Chief among these is the earnings cap proposed by both WIEG and CUB. (Items 39 and 40; Direct-CUB-Hahn-27; Direct-WIEG-Kollen-11). Under these similar proposals, WEPCO, WG, and WPSC would be required to return to customers any earnings above each company’s authorized return on equity—either for four years (per WIEG) or, apparently, forever (per CUB).

The proposed earnings caps proceed from an apparent notion that a utility should never earn more than its authorized ROE. But the ROE authorized in ratemaking proceedings is neither a guaranteed return nor a cap on the utility's actual earnings. Rather, it is recognized that the utility may well earn below its authorized ROE, and its shareholders bear that risk. If instead the utility outperforms its authorized ROE, the reasons it did so may be considered during the utility's subsequent rate proceedings. *See, e.g.*, Final Decision and Order dated Dec. 23, 2014, Dkt. 05-UR-107 (PSC REF # 226564) at 33 (“WEPCO bears the risks and rewards of any . . . unexpected expenses or revenue under well-established ratemaking principles”). But when the utility exceeds expectations, converting those extra earnings into customer credits between rate proceedings is patent retroactive ratemaking, and prohibited under Wisconsin law. Wis. Stat. § 196.37; *Century Tel of Midwest-Kendall, Inc. v. PSC*, 2002 WI App 236, ¶¶ 30-32, 257 Wis.2d 837, 653 N.W.2d 130 (“whether a rate increase or decrease is at issue [...] the PSC is authorized to evaluate a just and reasonable rate only for services that will be provided in the future”); *Wisconsin Power & Light Co. v. PSC*, 181 Wis. 2d 385, 395, 511 N.W.2d 291 (1994) (“The statute is plain on its face. The commission may only set rates prospectively, without recourse to backward-looking remedies. . .”).

The Commission decisions cited by CUB and WIEG—regarding Northern States Power Company (“NSP”) in Docket No. 4220-UR-120 and Wisconsin Power and Light Company (“WPL”) in Docket No. 6680-UR-119—are distinguishable. In NSP's case, as part of a stipulation limiting the scope of its revenue requirement audit, the utility agreed to an earnings cap on its electric and natural gas earnings for 2015 only. Final Decision dated Dec. 23, 2014 (PSC REF# 226559) at 8. In WPL's case, a revenue sharing mechanism—not an earnings cap—had already been introduced in the utility's prior rate case as part of an uncontested compromise

proposal among the utility, WIEG, CUB, and Staff. Final Decision dated July 20, 2012, Dkt. 6680-UR-118 (PSC REF# 168724) at 1-2, 5-6. WPL's most recent rate case simply maintained that sharing mechanism, again as part of an uncontested compromise proposal between the parties. Final Decision dated July 17, 2014, Dkt. 6680-UR-119 (PSC REF# 210409) at 1-2, 6. Earnings caps introduced at the utility's behest and in regularly scheduled rate proceedings are wholly distinct from the kind of earnings cap at issue here—proposed over WEC's protest, unabashedly on the basis of historical earnings, and as a condition of Transaction approval. (Sur-Rebuttal-WEC-Lauber-9).

4. Recovery of transition costs should be allowed and conditioned per Item 86.

WEC has agreed that WEPCO, WG, and WPSC can recover transition costs⁶ from the Wisconsin retail jurisdiction, only if and to the extent that (a) such costs are incurred by or allocated to each of the utilities (each utility's portion or share of acquisition-related costs); (b) such costs are associated with financial benefits that each utility's ratepayers will receive as a result of the acquisition; and (c) the acquisition-related savings realized by each utility's ratepayers are equal to or greater than its acquisition-related costs. (Item 86, Rebuttal-WEC-Lauber-16-17). In short, transition costs may be recovered only if and to the extent they produce net savings. CUB agrees with this condition. (Rebuttal-CUB-Hahn-8).

The agreement between WEC, Staff, and CUB with respect to Item 86 renders CUB's parallel condition (Item 82) moot. The Commission should also reject as unnecessary WIEG's more stringent proposals regarding deferral and recovery of transition costs. (Items 83-85, Direct-WIEG-Kollen-23). WEC has already agreed that it will not seek recovery of transition costs unless incurring such costs results in equal or greater savings. WIEG's proposal to deny

⁶ WEC, like the Commission, uses "transition costs" to mean forward-looking costs to achieve efficiencies—as distinct from "transaction costs," which are the costs to execute the Transaction. (Direct-WEC-Lauber-7).

recovery of even these costs would make it preferable for WEC to avoid any spending necessary to create efficiencies, a result wholly at odds with the purpose of the Transaction. Ironically, WIEG's zeal to avoid a "win" for WEC may result in a loss for customers, including WIEG's own constituents. The Commission should adopt Item 86 and reject Items 82 through 85. (Sur-Rebuttal-WEC-Lauber-3, 15-16).

In general, the additional benefit conditions proposed by Staff and intervenors have two things in common. First, they seek to "capture" or "secure" immediate benefits for customers, whereas WEC has identified benefits elsewhere, and WEC has agreed to conditions such that when these benefits materialize, customers will not be left out. Second, most of these additional conditions bear a vague resemblance to conditions familiar from other proceedings, permitting proponents to argue that these conditions are nothing new. In fact, the resemblance is misleading: in prior proceedings, these burdens were either paired with benefits, agreed to voluntarily, or both. The Commission should be wary of these conditions, some of which also invite retroactive ratemaking, and should reject all of them here.

IV. The conditions WEC has accepted adequately protect customers and others against risk resulting from the Transaction, rendering additional conditions unnecessary.

Just as WEC has accepted conditions to ensure that customers and the public benefit from the Transaction, WEC has also accepted conditions intended to protect customers and the public from Transaction-based risks. As stated in Ex.-WEC-Lauber-04 and -10, these include:

- WEPCO, WG and WPSC shall be obligated to comply with the terms of Wisconsin's Holding Company Act, Wis. Stat. § 196.795, relating to affiliated interest transactions. [Item 17]⁷

⁷ WEC has interpreted this condition to mean that it is obligated to comply with the Wisconsin Holding Company Act (the "Act") in this regard. (Rebuttal-WEC-Lauber-5; Ex.-WEC-Lauber-10 at 2-3). Ms. Bartels continues to assert that it means something more, but it is unclear from her testimony what more it could mean. *See* Rebuttal-PSC-Bartels-2-3 (emphasizing that WEC is bound by the Act); Sur-surrebuttal-PSC-Bartels-2 (condition is a

- WEC may not recover from ratepayers twice for identical services performed by operating utilities and the service company. [Item 18]
- WEPCO, WG and WPSC will not participate in money pools (arrangements under which cash is shared between WEC Energy Group and its subsidiaries). [Item 43]⁸
- WEC Energy Group shall be subject to all applicable requirements of Wis. Stat. § 196.795 and to all of the conditions and requirements in any Commission order related to WEC and Integrys, including but not limited to the holding company formation orders and relevant merger orders. [Item 50]
- All books and records of all entities in the corporate structure shall be readily available for Commission staff review in a reasonable manner, subject to approval by the Commission. [Item 51]⁹
- WPSC shall cooperate with Commission Staff on a study of WPSC's gas emergency response process. Within six months of the closing of the Transaction, this study group will report back to the Commission. [Item 58]
- The Commission shall have full access to the books and records of the service company as provided in Wis. Stat. §§ 196.52 and 196.795(5). [Item 69]
- The parent holding company or its subsidiaries shall not elect to have the FERC review, pursuant to Section 1275 of EPACT 2005, 42 U.S.C. § 16462, the allocation of costs for goods and services provided by the service company, until the Commission has reviewed and taken action on the affiliated interest transactions and agreements associated with the service company or amendments thereto. If the Commission has not completed its review and approval within a reasonable time after the Commission determined an amendment to the service company agreement is complete, the entities may seek such FERC review after giving the Commission 60 days' prior written notice. [Item 71]
- The Commission shall as a condition of acquisition approval take continuing jurisdiction over the service company structure. [Item 73]

more specific reminder" that WEC is bound by the Act). WEC disfavors conditions that merely restate the law, and asks the Commission to adopt Item 17 as stated in Ex.-WEC-Lauber-10.

⁸ WEC originally accepted this condition to the extent it did not exceed the requirements of the Holding Company Act. (Rebuttal-WEC-Lauber-8). Staff then agreed to treat this item as uncontested. (Rebuttal-PSC-Hubert-12-13). More recently, Ms. Hubert has proposed returning to the original language of Item 43. (Sur-surrebuttal-PSC-Hubert-4). WEC submits that the surplus language exceeds the requirements of the Holding Company Act, and asks the Commission to approve Item 43—if at all—as stated in Ex.-WEC-Lauber-10.

⁹ While WEC has accepted Items 50 and 51 as stated, WEC must oppose Item 52 in light of Ms. Bartels' most recent testimony (Sur-surrebuttal-PSC-Bartels-3-4), where she insists that WEC notify the Commission of every filing with other state commissions and FERC until the Commission has a better idea of which filings it considers relevant to its authority. WEC has committed to work with Commission staff to identify such categories of filings up front (Sur-Rebuttal-WEC-Lauber-12), but Ms. Bartels' absolute position is simply unworkable.

Staff and intervenors insist that still more conditions are needed. They propose a series of conditions that are either unnecessarily onerous or otherwise duplicative of the Commission's statutory authority. The Commission should reject these conditions accordingly.

A. The proposed ring-fencing conditions are duplicative of the Wisconsin statutes or covered by prior rate orders, so are unnecessary.

Numerous conditions proposed by Staff and intervenors are best described as ring-fencing conditions, in that they seek to protect the operating utilities (and, ultimately, utility customers) from potential negative financial effects of the Transaction. WEC has already agreed to several such conditions and the remainder are unnecessary and in some cases inappropriate.

First, Staff and CUB propose various prohibitions and restrictions on dividends issued by the utilities to the parent company. (Items 36-38, Direct-PSC-Hubert-13-15; Direct-PSC-O'Donnell-39; Direct-CUB-Hahn-26). The two conditions proposed by Staff—which restrict dividends that would cause the utilities to fall beneath floor and average common equity ratios—appear to duplicate the conditions typically imposed in utility rate cases. Based on this understanding of the conditions, WEC initially indicated that it did not oppose them. (Rebuttal-WEC-Lauber-6). However, after additional testimony from Staff (Rebuttal-PSC-Hubert-8-10), it is no longer clear whether these conditions (Items 36 and 37) are duplicative or additional. Either way, WEC's position is that they are unnecessary: if they duplicate dividend restrictions from recently concluded rate cases, they are redundant; if they are something more, the rate case restrictions are sufficient. The rating agencies agree. In reports issued on February 27, 2015, Fitch stated its opinion that the Wisconsin utilities are adequately protected by the dividend restrictions currently in place:

The pending acquisition of Integrys bears no impact on [WEPCO's and WG's] credit profile, in Fitch's view. Regulatory ring-fencing measures, including dividend restrictions, shield [WEPCO and WG] from potential parent financial contagion.

(Sur-Rebuttal-WEC-Lauber-7-8; Ex.-WEC-Lauber-11, 12). Further, Staff's proposed conditions represent unwarranted micro-management, since they would take away flexibility granted by rate orders and turn the common equity ratios set in those orders into absolute floors that can never be crossed, even momentarily, rather than long-term ratios, which is what they are intended to be. (Sur-Rebuttal-WEC-Lauber-7-8). CUB's proposed restriction (Item 38) is unnecessary for a different reason: it is superfluous in light of WEC's commitment (Item 50) to be bound by the Holding Company Act. (Sur-Rebuttal-WEC-Lauber-7-8).

Next, Staff and WIEG propose conditions denying the Wisconsin utilities recovery of any increased financing costs attributable to rating agency downgrades. (Items 41 and 42; Direct-PSC-Hubert-17; Direct-PSC-O'Donnell-40; Direct-WIEG-Kollen-24). WEC opposes these conditions for three reasons: (1) the credit rating agencies have not downgraded WEC's or any of its affiliates' credit ratings since the Transaction was announced; (2) even in the event this were to occur, it would be nearly impossible to disentangle the factors leading to such a downgrade and assign a dollar value to each factor; and (3) the very imposition of burdensome conditions such as this one could, ironically, result in the downgrade that everyone is hoping to avoid. (Rebuttal-WEC-Lauber-7-8). In response, proponents speculate that a downgrade could occur, that loss attribution and apportionment would be easy to calculate, and that any downgrade must be due to the Transaction, as opposed to Commission action. (Rebuttal-PSC-Hubert-11-12; Rebuttal-WIEG-Kollen-17).

WEC disagrees—particularly in light of Ms. Hubert's clarification that her proposal encompasses any increases to borrowing costs, ever. (Rebuttal-PSC-Hubert-11). By this point, the vagaries of such a proposal should be fairly obvious. Absent an agency's attribution of its downgrade to the Transaction and only the Transaction, which factors in the world and/or

national economy and/or the energy industry could be said to have “caused” the downgrade, and what percentage of responsibility should be assigned to each? If the downgrade is at the parent level, what is the “cost” of that downgrade to the utilities and their customers? Under the proposed conditions, any downgrade would require a detailed Commission inquiry into such questions. As Fitch itself has confirmed, this is precisely the sort of “deterioration in the Wisconsin regulatory compact” which “could lead to negative rating action.” (Sur-Rebuttal-WEC-Lauber-9-10; Ex.-WEC-Lauber-11, 12). The Commission should reject these conditions.

Finally, Staff and CUB propose conditions relating to the debt to be held by WEC Energy Group and its regulated subsidiaries. Staff proposes that WEC Energy Group be required to report on its debt and its plans to reduce it. (Item 46, Direct-PSC-Hubert-18; Direct-PSC-O’Donnell-40). WEC has agreed to provide such a report annually (rather than every 90 days, as originally proposed), and Ms. Hubert has accepted that modification. (Rebuttal-PSC-Hubert-13). However, Ms. Hubert proposed additional language in her rebuttal testimony requiring the holding company to make special reports within 30 days of any changes to the debt reduction plan or holding company debt. (*Id.*) Recognizing that holding company debt can change on a daily basis, WEC cannot agree to this latest addition. (Sur-Rebuttal-WEC-Lauber-11). WEC asks the Commission to approve the annual reporting compromise on Item 46.

CUB proposes that each Wisconsin regulated subsidiary be required to maintain its own credit rating and portfolio of debt that is independent of the post-acquisition parent. (Item 45, Direct-CUB-Hahn-26). WEC has already committed that the operating utilities will not participate in money pools (Item 43, Rebuttal-WEC-Lauber-9), but cannot agree to a condition that would require each regulated utility to maintain its own credit rating forever. CUB counters that WEC should have no problem with a condition it currently meets. (Rebuttal-CUB-Hahn-7).

But the issue is not the known present; it is the uncertain future. (Sur-Rebuttal-WEC-Lauber-11). This condition is unnecessary in light of WEC's other commitments and existing law.

B. The proposed service company and affiliated interest provisions are also duplicative and unnecessary.

Another set of conditions relates to the proposed service company and affiliated interest relationships. Staff witness Ms. Bartels notes that “[t]he only place for the Commission to require service company formation and structural conditions is as a condition of merger approval.” (Direct-PSC-Bartels-25, fn. 9). The clear and unfortunate implication is that the Commission should seize this chance to impose conditions on a service company that would otherwise remain largely unregulated. Respectfully, such encouragement ought to serve instead as a red flag. A common theme uniting many of the conditions proposed by Staff and intervenors is the notion that this application presents the Commission with the unique opportunity to impose conditions that proponents desire but cannot obtain elsewhere. This approach provides direct support for Mr. Reed's description of a Transaction-inspired “feeding frenzy.” (Rebuttal-WEC-Reed-4).

One proposed condition relating to the service company is Item 70, relating to cost allocations in the event of a significant downsizing. (Direct-PSC-Bartels-30). WEC has explained that this condition is unduly hypothetical, does not permit sufficient flexibility for parties or the Commission in future proceedings, and in any event is unnecessary in light of the Commission's ongoing oversight of the service company's cost allocations. (Rebuttal-WEC-Lauber-14). Staff's only response is that a similar condition has been imposed in past Commission decisions, and that this condition “simply requires the applicant to make a case for recovery.” (Rebuttal-PSC-Bartels-4-6).

But the Wisconsin utilities are always required to make a case for recovery of costs in rates, so it is unclear what this condition would add. Staff has identified only one prior proceeding¹⁰ in which the Commission imposed an identical provision: the February 16, 2007 Final Decision approving the WPSR acquisition of PEC in docket 9405-YI-100 (PSC REF# 69612). In that case, the Commission was exercising its authority under Wis. Stat. § 196.795(5) (“Regulation of Holding Company Systems”), and stated that the condition was necessary to satisfy the terms of that subsection. *Id.* at 12. Here, WEC has already agreed (Item 17) to be bound by the provisions of the Holding Company Act.

Moreover, the parallel condition in the WPSR/PEC proceeding emerged from a series of settlement conferences, and the applicants did not oppose it. *Id.* at 3. Notably, in that proceeding, the condition was one of four conditions proposed as a solution to the problem of “trapped costs” resulting from a disparity between state and federal service company allocation factors under Section 1275 of EPACT 2005. (Sur-Rebuttal-WEC-Lauber-13). Here, by contrast, Staff has proposed a different solution to that same problem: “WEC should be required to obtain approval from state commissions before applying to FERC.” (Item 71; Direct-PSC-Bartels-29, 31). WEC has agreed to that condition outright. (Ex.-WEC-Lauber-10). In light of WEC’s acceptance of Item 71, the “problem” that motivated Item 70’s counterpart in the WPSR/PEC docket is solved, and the Commission should reject Item 70 in this proceeding.

Next, Staff proposes that the Commission order periodic audits of the service company and its transactions. (Item 72, Direct-PSC-Bartels-29-30). Initially, Ms. Bartels did not propose

¹⁰ Staff claims to have identified two other such proceedings. (Rebuttal-PSC-Bartels-3-4; Sur-surrebuttal-PSC-Bartels-3). But these others—Dockets 6680-AU-115 and Docket 6690-AU-114—imposed no such condition. Indeed, the Commission’s orders in those dockets (PSC REF# 157493 and PSC REF# 158527, respectively) say nothing whatsoever about down-sizing. The order points Staff describes as “based on the same concept” as proposed Item 70 more closely resemble Item 17 in this proceeding (addressing affiliated interest agreements). In short, Staff is incorrect: these examples do not support proposed Item 70.

any justification for this condition. (*Id.*) More recently, Ms. Bartels has stated that the purpose of this condition is to clarify aspects of the Commission’s existing authority. (Rebuttal-PSC-Bartels-6). While WEC has since accepted this condition as drafted (Sur-Rebuttal-WEC-Lauber-14), WEC does have a problem with Transaction conditions that simply reiterate aspects of the Commission’s statutory authority, particularly in light of WEC’s express acceptance of the Commission’s continuing jurisdiction over the service company structure. (Item 73; Rebuttal-WEC-Lauber-14). The same is true of Item 74, which WEC has also accepted (*id.*), but which merely repeats a number of restrictions in the Holding Company Act. Conditions that may be intended to “clarify” statutory authority actually create ambiguity as soon as there is any daylight between the statutes and the “clarifying” conditions. Absent a demonstrated problem that cannot be fixed with reference to the statute alone, the Commission should defer invitations to “clarify” through its conditioning authority.¹¹

Staff further proposes a condition relating to the service company’s performance of services. (Item 75; Direct-PSC-Bartels-30). WEC and Staff nearly reached agreement on this item, subject to WEC’s request that the condition account for instances in which the service company should perform certain services for qualitative as well as quantitative reasons. (*Id.*) Most recently, however, Ms. Bartels has rejected that request, which she says would “give blanket approval for inclusion of any services.” (Sur-surrebuttal-PSC-Bartels-4). In fact, it would simply add a qualitative element to the Commission’s future analysis of such services, and WEC asks the Commission to include this element in any adoption of Item 75.

Finally, Staff proposes that the service company be prohibited from providing services to companies that are not part of the holding company system without the Commission’s approval,

¹¹ WEC opposes Item 77 (addressing allocation of synergy savings) for a similar reason: it is once again duplicative of the Commission’s existing authority under the statutes (Rebuttal-WEC-Lauber-16) and is also premised on an unlikely contingency (Sur-Rebuttal-WEC-Lauber-15). The Commission need not restate its inherent authority.

subject to an exception for temporary transition services. (Item 76; Direct-PSC-Bartels-30). WEC attempted to accept this condition, but requested clarification as to the meaning of “temporary” and whether it could seek Commission approval for permanent services. (Rebuttal-WEC-Lauber-16). Ms. Bartels responded that this condition has been adopted in prior Commission decisions, she is unable to define “temporarily” but “will know it when she sees it,” and Staff is unlikely to support any permanent provision of services to an unrelated third party (including a potential arrangement with UPPCo). (Rebuttal-PSC-Bartels-9-11). More recently, Ms. Bartels has added that in her view, “[t]he fact that [this condition] may complicate the applicants [sic] business planning is inconsequential.” (Sur-surrebuttal-PSC-Bartels-5).

In light of this response, Ms. Bartels’ proposal in Item 76 is unacceptable. (Sur-Rebuttal-WEC-Lauber-15). From the outset, WEC has questioned whether this condition exceeds the Commission’s supervisory authority under the public utility statutes. (Rebuttal-WEC-Lauber-15). In addition, WEC notes that Item 76 was another one of the settlement conditions in the WPSR/PEC proceeding, discussed above. Thus it should be rejected for the same reasons as Item 70: (1) it was formerly proposed as part of a solution to a “trapped costs” problem that has been solved differently in this proceeding; (2) accepted without contest following settlement discussions; and (3) deemed necessary pursuant to the Commission’s authority under the Holding Company Act, which WEC has expressly agreed to be bound by here. And in any event, the source of this item—WEC’s proposed sale of electric assets to UPPCo—is now moot.

C. WEC has accepted most of Staff’s proposed operational conditions.

Staff witness Ms. Nieto proposed several operational conditions (Items 53, 54, 56, 58, 59, and 63), and with limited exceptions, WEC has accepted some form of each condition:

- Ms. Nieto proposed a condition relating to average speed of answering at WPSC’s customer service call center. (Item 53). WEC agreed to a 90-second response requirement, but opposed submitting a plan on this point.

- Ms. Nieto proposed a condition relating to charitable contributions. (Item 54). WEC agreed to the second alternative form of this proposal (i.e., no condition on this point).
- Ms. Nieto proposed a condition relating to combined customer service operations. (Item 56). WEC opposed this condition, explaining that while WEC will continue to work with the Commission on these issues and will comply with all applicable notice and filing requirements under the statutes and administrative code, the proposed condition is neither warranted nor supported by the record or existing law.
- Ms. Nieto proposed a condition relating to WPSC's gas emergency response process. (Item 58). WEC accepted this condition.
- Ms. Nieto proposed a condition relating to the implementation of ICE software. (Item 59). WEC accepted this condition with clarification.
- Ms. Nieto proposed a condition relating to low-income programs (LIPs). (Item 63). WEC agreed to the third alternative form of this proposal, which is that the Commission shall review the LIPs in future rate cases.

(Direct-PSC-Nieto-9, 13-15, 18, 20-21; Rebuttal-WEC-Lauber-10-12). Ms. Nieto did not file rebuttal testimony or otherwise respond to WEC's position on these points. Except for Item 56, which should be rejected, the Commission should approve these items as clarified by WEC.

D. Any “most-favored nation” clause should be handled as proposed by WEC.

Staff and various intervenors have proposed different versions of a “most favored nation” clause as a condition for Transaction approval. (Items 32-35; Direct-PSC-Hubert-21; Direct-CUB-28-29; Direct-WIEG-Kollen-24). WEC opposes these conditions as unnecessary and potentially detrimental. (Rebuttal-WEC-Leverett-13). In light of the well-developed record in this proceeding, it is unlikely that material conditions have been overlooked, there is danger of a cross-jurisdictional standoff if multiple jurisdictions adopt a “you go first” mentality, and the Commission can always reopen this docket if some unique condition is adopted in another state that is feasible to implement in Wisconsin and would benefit Wisconsin customers. (*Id.*)

However, in an effort at compromise, WEC has proposed a compliance filing to be made within 90 days of the closing of WEC's purchase of Integrys. The details of that proposal are

stated at Sur-Rebuttal-WEC-Leverett-7-8. Critically, this compromise would allow WEC to close the Transaction in a timely manner, while providing the Commission with useful information about final conditions in other jurisdictions. On the basis of that information, the Commission can exercise its authority under Wis. Stat. § 196.39 to reopen this docket—authority it would have even without imposing a “most favored nations” condition here. WEC asks the Commission to approve WEC’s proposed approach and reject Items 32 through 35.

E. Workforce and headcount conditions are unwarranted micromanagement.

Local 420 of the International Union of Operating Engineers (“Local 420”) has proposed a condition requiring WEC to “meet and confer with Local 420 and other employee representatives in developing a post-acquisition workforce plan.” (Item 55; Direct-IUOE Local 420-Maierle-3, 12). Local 420 has also proposed that WEC be required to commit to maintain a specific level of full-time employees in Wisconsin. (*Id.* at 11-13).

In its rebuttal testimony, WEC opposed these conditions, noting that the “meet and confer” condition was vague and poorly defined, and that the proposed headcount condition would more than double the commitment WEC has already made for the first two years following the Transaction. (Rebuttal-WEC-Leverett-15-16). Voluntary compromises are one thing, but the Commission should reject Local 420’s invitation to act as some sort of super-personnel committee. Instead, it should respect the arrangement WEC’s management has already reached with Local 420. And in any event, because Local 420 did not respond to WEC’s position, the Commission should treat the rejection of Items 55 and 57 as uncontested.¹² The

¹² Staff witness Ms. Hubert claims that the existence of these items means that Item 60—previously uncontested—should now be treated as contested on the decision matrix. (Sur-surrebuttal-PSC-Hubert-3). WEC disagrees. Item 60 is a condition that Ms. Hubert proposed, and WEC accepted it. It does not become “contested” merely because other, related items may be contested. The Commission should adopt Staff’s proposed condition, as accepted by WEC, and reject Items 55 and 57.

Commission should likewise reject any implicit—and wholly unsupported—suggestion that WEC’s voluntary two-year commitment be extended to management. (Direct-PSC-Hubert-10).

F. WEC’s existing commitment on rate levelization is sufficient.

WEC has stated that it will not seek to merge the Wisconsin utilities or levelize their rates without consulting all interested parties and unless such a proposal is in the best interests of the affected parties. (Direct-WEC-Lauber-16-17). While WEC could not act unilaterally without the Commission’s approval, Staff and various intervenors want more: GLU and WIEG seek an absolute ban on levelization for at least five years (together with certain restrictions on utility restructuring), and Staff seeks to require complete consensus by all parties if levelization is to occur within a five- to ten-year period. (Items 66-68; Direct-GLU-Lowry-27-28; Direct-WIEG-Kollen-10; Direct-PSC-Hubert-18-19).

These conditions are unrealistic and unnecessarily onerous, particularly in light of WEC’s existing commitment. Staff’s position comes closest to WEC’s, but Ms. Hubert’s insistence on total agreement by all interested parties simply is not viable. (Rebuttal-WEC-Lauber-13; Sur-Rebuttal-WEC-Lauber-12-13). Rather than creating such a veto right—or worse, predetermining the issue via a flat ban—the Commission should adopt WEC’s condition as stated.

G. WEC’s commitments regarding corporate and operational headquarters are sufficient.

WEC has committed that the headquarters of the post-merger WEC Energy Group and associated jobs will be located in Wisconsin, critical decisions affecting energy policy in Wisconsin will continue to be made in Wisconsin, and the new WEC Energy Group will maintain operational headquarters in the cities of Milwaukee and Green Bay. (Ex.-WEC-Lauber-1 (Application) at 14; Rebuttal-WEC-Lauber-12). In response, Staff expressed skepticism (even speculating that WEC might be secretly plotting a move to Chicago) and

proposed conditions going further and requiring Commission approval of any move of the headquarters. (Items 61-62; Direct-PSC-Hubert-11; Ex.-PSC-Hubert-1, Schedule 1 at 5-6).

WEC maintains these conditions are unnecessary in light of its express commitments. (Rebuttal-WEC-Lauber-12). The Commission ought to leave it at that. To the extent approval may be required under the law, WEC would surely seek it prior to moving either corporate or operating headquarters. But WEC has no plans for such a move (*id.*), and the Commission cannot use its conditioning authority under Wis. Stat. § 196.395 to expand its otherwise defined statutory authority. *Rural v. PSC*, 2000 WI 129, ¶ 59, 239 Wis. 2d 660, 619 N.W.2d 888.

H. Jobs4WI seeks to relitigate Power the Future, and its rate design proposals were already rejected in WEPCO's latest rate case.

Finally, Jobs4WI proposes a pair of conditions seeking to alter the operation and financial consequences of current Power the Future (“PTF”) leases. (Items 5 and 6; Direct-Jobs4WI-Vock-6-10, 16). As WEC has explained, the Commission rejected this proposal when Jobs4WI raised it just a few months ago in WEPCO’s most recent rate case. In addition, having approved these leases in dockets 05-AE-109 (2002) and 05-AE-118 (2003), the Commission lacks legal authority to modify or terminate them. (Rebuttal-WEC-Leverett-18); Wis. Stat. § 196.52(9)(e).

These proposals represent yet another example of an intervenor treating this docket as an opportunity to seek relief that is simply not available otherwise. The Commission should reject these baseless conditions. (Sur-Rebuttal-WEC-Leverett-11-12).

V. The ATC-related conditions proposed by WEC appropriately balance ownership, governance, and influence, so additional ATC-related restrictions are unwarranted.

Numerous conditions raised by Staff and intervenors relate to the governance of ATC. (Items 19-31; Direct-PSC-Pilo-8-14; Direct-PSC-Hubert-21-33; Direct-GLU-Kothari-3-7; Direct-GLU-Lowry-7-9, 28-30; Direct-Jobs4WI-Vock-17). Like the “customer benefit” conditions discussed above, all of these conditions are merely proxies for an issue WEC itself

has already addressed: ownership control over ATC. These proposed conditions emanate from a vague and unproven concern about vertical market power, and are supported by a revisionist history of ATC and the legislation that enabled it.

These conditions are also unnecessary in light of the voting restrictions already offered by WEC. WEC has already addressed the ATC-related conditions at length in its testimony (Rebuttal-WEC-Leverett-3-13; Sur-Rebuttal-WEC-Leverett-3-7), and will not repeat those arguments here. Instead, WEC will emphasize four key points which, individually and together, demonstrate why none of these conditions is necessary.

First, there simply is no vertical market power concern here. Energy market power expert and former FERC senior economist Dr. David Hunger has said so quite clearly: “even if Applicants were deemed to wholly control ATC, **this would not raise a vertical market power issue.**” (Rebuttal-WEC-Hunger-5) (emphasis added). Thus the sole potential basis for these conditions does not exist.

Second, any notion that Wisconsin law somehow precludes majority ownership of ATC either blurs or blots out historical reality. Nothing in Wis. Stat. § 196.485 says anything about majority ownership. At its inception, WEPCO owned 51% of ATC—and would have owned more than 60% if Alliant had not transferred its Wisconsin transmission facilities to ATC. (Rebuttal-WEC-Leverett-6-7). More to the point, the earliest available draft of 1999 Senate Bill 196—the earliest version of what would become § 196.485—contained the following language:

[A] transmission utility that transfers its transmission facilities to the [transmission company] shall receive securities in the form of common stock with voting rights, preferred stock without voting rights, and bonds . . . provided, however, that no transmission utility shall receive such common stock with voting rights to an extent that will allow it to control the [transmission company], and in such case preferred stock without voting rights shall be substituted for common stock.

(Ex.-WEC-Lauber-14 at 5) (emphasis added). This language, visible in the April 1, 1999 draft of 1999 SB 196, is absent from the subsequent draft, dated May 18, 1999. (*Id.* at 9-30) And both drafts predate the first official draft of the bill prepared by the Legislative Reference Bureau in June of 1999. (*Id.* at 31-55). In short, any notion of a prohibition on majority ownership had been removed from Act 9 before it even arrived at the LRB.

Third, GLU's push for an ATC board seat or enhanced voting power (*e.g.*, Items 23, 24, and 31) is troubling on multiple levels. GLU's members own a combined 1.59% of ATC. (Ex.-WEC-Lauber-13). In crafting Wis. Stat. § 196.485, the Legislature expressly provided that Board seats for minority owners (and then only in 10% voting blocs) would sunset after ten years. *Id.* at sub. (3m)(c)3.b. In short, GLU asks the Commission to grant it control that is grossly disproportionate to its ownership, and which the law never contemplated. (Sur-Rebuttal-WEC-Leverett-3-4). Even Staff agrees: "GLU does appear to be seeking a fundamental change in the way in which ATC is managed." (Sur-surrebuttal-PSC-Hubert-5-6).

Finally, even if vertical market power were a substantiated concern (it is not), and even if majority control of ATC were somehow prohibited by statute (it is not), WEC has proposed voting restrictions sufficient to resolve any lingering concerns. WEC's proposed voting restrictions strike an appropriate balance between minimizing its influence over the day-to-day operations of ATC while simultaneously protecting WEC's investment. The rest is whispers and conjecture. The Commission should approve the Transaction without requiring more.

Respectfully submitted this 30th day of March, 2015.

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